IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

CRL.A.No. 940 of 2007(B)

SC.146/2006 of ADDL.SESSIONS COURT (ADHOC)-I, KOTTAYAM
CP.19/2006 of JUDL. MAGISTRATE OF FIRST CLASS, ERATTUPETTA

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APPELLANT:

RAJAPPAN, C.NO.1041
CENTRAL PRISON
TRIVANDRUM

BY ADV. ADV.ARUN B VARGHESE(STATE BRIEF)

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE
PUBLIC PROSECUTOR

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.940 OF 2007

Dated this the 26th day of July, 2007.

JUDGMENT

The sole accused in S.C.No.146/2006 on the file of the Sessions Court, Kottayam, is the appellant. The appellant faced trial for the offence punishable under Section 511 of 376 of the I.P.C. The brief facts of the prosecution case against the appellant are as follows:

On 14.5.2006 at about 2 p.m while PW1, a girl aged 13 years, passing a lane (idavazhi) at Muttamthodu in Poonjar Thekkekara Village of Kaippallikara, the appellant asked her to give a kiss to him and he immediately took her to the nearby bushes, laid on her body, moved her midi upwards, pulled down her panties by inserting his hand in the panties and closed her mouth and began to undress by himself. Immediately the girl slipped out from the clutches of the appellant and she sought assailance in the house of PW2. To prove the above case against the appellant, prosecution examined Pws 1 to 7 and relied on Exts.P1 to P6. After closing the prosecution evidence, the appellant was questioned under Section 313 of the Code. Denying the prosecution charge, the appellant had stated that

the case was foisted against him by the parents of PW1 and he is innocent. However, after considering the entire evidence, the trial court found the appellant committed an offence punishable under Section 511 of 376 and he was found guilty thereunder and sentenced to undergo R.I for four years and to pay a fine of Rs.7,500/= and in default of payment of the fine, to undergo R.I for a further period of one year. The court also ordered that if the fine is collected, an amount of Rs.5,000/= shall be given to PW1, the victim. The court also allowed the benefit of Section 428 of Cr.P.C to the appellant. The above judgment of the trial court is challenged in this appeal.

2. This appeal is filed through the jail authorities. Since the appellant is not having a counsel of his own choice, a member from the State brief panel has been appointed to argue the case for and on behalf of the appellant. Heard the learned counsel appearing for the appellant as well as the Public Prosecutor. The counsel appearing for the appellant contended as follows:

Firstly, the counsel submits that the trial court committed serious error in believing PW1 and PW2 as the evidence of these

witnesses would not prove that the appellant had committed an offence as alleged by the prosecution. Secondly, it is contended that the medical evidence adduced by the prosecution would not prove that the appellant had committed any offence as alleged by the prosecution. Thirdly, it is contended that the evidence of PW2 can be taken as corroborative evidence of PW1, the victim, as one Bhargavi was questioned by the investigation Officer as an occurrence witness, she was not examined before the court. Finally, it is contended that the sentence awarded against the appellant is excessive. The question to be considered in this appeal whether the finding entered by the trial court is justifiable or not. The prosecution case spoken to by PW1 is supported by PW2. PW1 is a girl of 13 years at the time of the incident and she was studying at 8th standard in a nearby school. This witness has stated before the court that the incident was on a Sunday and she went for Sunday class in the church on that day and after the Sunday class she was returning to her house along the pathway leading from Muttamthodu to her house side. It was a byline and when she reached near the house of PW2, the appellant was on the pathway and he asked whether she would give a kiss to him and immediately she was taken to the nearby

bushes by the appellant. This witness has further stated that the appellant made her to laid down on the ground and also removed her dresses and he tried to remove his own dress and immediately she slipped from the clutches of the appellant and she went to the house of PW2. At that time, PW2 was also present in the house and she asked her what had happened. PW1 told what had happened in the pathway. She had further stated that the place where she was laid was a bushy place and it is about 7 meters from the pathway. This witness has further stated that she had told everything happened at the lane to PW2 and PW2 had given some water to PW1 and PW2 informed the matter to the parents of PW1. Thereafter she was taken to the police station and also to the hospital. The evidence of this witness has been seen corroborated with that of the evidence of PW2. PW2 had stated before the court that on the day of the incident PW1 came to her house at about 2 O' Clock and at that time she was in the kitchen. This witness has further stated that when PW1 came to her house, she asked what had happened. The evidence of this witness also would show that PW1 was afraid and trembled due to the act of the appellant. She had stated to PW1 that don't be worry and after giving a glass of water to PW1, PW2 had informed the

matter to the parents of PW1. This witness has stated that her house is on a hilly place and there was no other houses in the locality. This witness has further stated that she had informed the matter to the parents of PW1 and PW1 was taken by her parents. This witness has further stated that what PW1 had told her that the appellant tried to rape her. To support the evidence of these two witnesses, prosecution examined PW3 - the mother of PW1. She had also given evidence before the court regarding the act done by the appellant. Further it is proved by PW5- the doctor, who examined PW1 that PW1 was examined by her and she had issued Ext.P3 wound certificate. PW5 has also noted the following injuries on the body of PW1. Abrasion 1cm noted on right cheek. But, this witness has stated that there was no evidence of any vaginal penetration or any sign of rape. This witness has also stated that the injuries found on PW1 could have been the cause as alleged. That apart, this witness has stated that the victim herself has told her that she was attacked by Rajappan, the appellant. Hence, the prosecution had succeeded in proving the fact that the appellant had committed the offence as alleged by the prosecution. The evidence of the Investigating Officer – PW7(the Sub Inspector), PW4 and the witnesses, who signed

Ext.P2 mahazar would also show that the prosecution had succeeded in proving the case as charge sheeted against the appellant. It is to be noted that as per Ext.P2 scene mahazar prepared by the Police Officer the place of occurrence is a bushy place and the place where PW1 was laid by the appellant was also seen that the bushes were disturbed.

3. On an over all appreciation of the entire evidence, this Court is of the view that the finding entered by the trial court is on evidence and it requires no interference. The contentions raised by the counsel appearing for the appellant are not sustainable in the light of the evidence adduced by the prosecution. Hence, the finding entered by the trial court is confirmed.

4. The next question to be considered whether the sentence awarded against the appellant is excessive or not. It is come out in evidence that the appellant is a man of 33 years whereas the appellant is a girl of 13 years and the incident had happened in a byline and the appellant had attempted to rape PW1 in a brutal manner. The appellant actually has committed the offence against a girl like PW1 and it is a heinous crime

In the above circumstances, this Court finds no ground to interfere with the sentence awarded against the appellant. Accordingly, the judgment of the trial court is confirmed and the appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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26th day of July, 2007.